

KING & SPALDING

King & Spalding LLP
1185 Avenue of the Americas, 34th Floor
New York, NY 10036-4003
Tel: +1 212 556 2100
Fax: +1 212 556 2222
www.kslaw.com

February 28, 2024

VIA ECF

Honorable Paul G. Gardephe
United States District Judge
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 2204
New York, NY 10007

Re: *Emigrant Bank, et al. v. SunTrust Bank, et al.*, No. 1:20-cv-02391-PGG-OTW

Dear Judge Gardephe:

We represent Defendant Truist Bank, successor by merger to SunTrust Bank (“Truist”). Pursuant to Your Honor’s Individual Practice Rules, this Court’s Local Rules, and this Court’s Sealed Records Filing Instructions, Truist respectfully submits this letter requesting leave to file ***temporarily*** under seal Exhibits A, C, and E to its forthcoming response to Plaintiffs’ pre-motion letter regarding their anticipated motion for partial summary judgment (ECF 157).

- Exhibit A is the expert report of Plaintiffs’ expert Mark Rule, relating to his opinions on alleged indicia of alter ego.
- Exhibit C is the expert report of Plaintiffs’ expert Ben Sheppard, relating to his opinions on alleged harm caused by “Virgo” and whether “Virgo” had the ability to pay a judgment if Truist had sued “Virgo” under an alter ego theory of liability.
- Exhibit E is the expert report of Truist’s expert Carlyn Irwin, responding to Mr. Rule’s report and Mr. Sheppard’s report.

Truist intends to file these exhibits to respond to Plaintiffs’ letter’s assertion that “Plaintiffs’ experts have confirmed Virgo’s domination and control of Calrissian,” whereas “SunTrust has not offered an expert (or any) opinion that no alter ego relationship existed.” (ECF 157, at 3 n.6.)

Exhibit A and Exhibit C. Plaintiffs have designated their experts’ reports (Exhibit A and Exhibit C) as confidential and maintain that the reports must be kept confidential because they cite information produced by the intervenors affiliated with Virgo Investment Group, LLC. Plaintiffs have indicated that those intervenors could resolve the confidentiality issue by agreement with Truist, but Plaintiffs have not consented to Truist sharing Plaintiffs’ reports with the intervenors. Intervenors’ counsel indicated that the intervenors are unable to provide their consent to allow the public filing of the reports without first seeing the content of the reports.

Truist believes the reports should ultimately be unsealed, as they relate to the business activities of an entity that has been in bankruptcy for eight years (Our Alchemy, LLC), an entity

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that entered bankruptcy in 2017 and no longer operates (Calrissian LP), and publicly available financial information about affiliates of Virgo Investment Group. However, because Plaintiffs designated the reports as confidential under the protective order in this case (ECF 75), Truist seeks permission to file Exhibit A and Exhibit C under seal temporarily to allow Plaintiffs or the intervenors the opportunity to justify the continued sealing of the reports.

Exhibit E. Truist's expert report contains certain information produced by the intervenors affiliated with Virgo Investment Group, LLC, which the intervenors designated as confidential. As with Exhibit A and Exhibit C, Truist believes that Exhibit E should also ultimately be unsealed. Counsel for the intervenors has not yet confirmed whether the intervenors consent or object to Truist making the information public. Accordingly, pursuant to the protective order, Truist seeks permission to file Exhibit E under seal temporarily to allow the intervenors the opportunity to justify the continued sealing of the report.

Truist appreciates the Court's attention to this matter.

Respectfully submitted,

/s/ Kenneth B. Fowler

Kenneth B. Fowler

Counsel for Truist Bank,

successor by merger to SunTrust Bank

cc: All Counsel of Record via ECF